

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT JACKSON

Assigned on Briefs April 8, 2008

STATE OF TENNESSEE v. QUINCY D'SHAWN DOUGLASS

**Direct Appeal from the Circuit Court for Madison County
No. 06-70 Donald Allen, Judge**

No. W2007-01823-CCA-R3-CD - Filed June 16, 2008

The defendant, Quincy D'Shawn Douglass, appeals from the judgment of the Madison County Circuit Court, revoking his probation and imposing service of the remainder of his sentence in confinement. In this appeal, the defendant argues that the court erred in revoking his probation. Following our review of the record, the parties' briefs, and the applicable law, we determine no errors exist in the court's revocation of probation, and thus affirm the court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JOHN EVERETT WILLIAMS and Norma McGee Ogle, JJ., joined.

Gregory D. Gookin, Jackson, Tennessee, for the appellant, Quincy D'Shawn Douglass.

Robert E. Cooper, Jr., Attorney General and Reporter; Sophia S. Lee, Assistant Attorney General; Jerry Woodall, District Attorney General; and Shaun A. Brown, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

In the instant case, the record reflects that the defendant pled guilty to two counts of robbery, Class C felonies, on April 24, 2006. As a result, he was sentenced to six years with six months to be served in confinement and the remaining balance to be served on probation. Subsequently, a probation violation warrant was issued alleging that the defendant violated the following terms of his probation: the defendant tested positive for cocaine, and the defendant was arrested for the unlawful possession of a firearm and stolen property. Thereafter, a probation revocation hearing was held.

At the hearing, Wes Watkins, the defendant's community corrections supervisor, testified that he began supervising the defendant in November of 2006. The defendant was treated for his drug addiction at the Jack Gean Drug and Alcohol Treatment Facility from October 17, 2006 to April 9, 2007. After his release from the Jack Gean facility, the defendant failed a drug screen and tested

positive for cocaine on May 25, 2007. The defendant was confronted regarding his failed drug test, but he denied using cocaine. The drug test results were later confirmed by an independent laboratory in Nashville. According to Watkins, the defendant was arrested by the Jackson Police Department for unlawful possession of a firearm the day after he failed his drug test.

On cross-examination, Watkins confirmed that the defendant had paid his court costs and supervision fees. Watkins reported that the defendant had completed approximately sixty hours of his one hundred hour community service requirement, and he never missed his weekly meetings. Watkins noted, however, that the defendant had not found employment.

Police Officer Steven Storey testified that the defendant was arrested for unlawful possession of a weapon which had been reported stolen. The defendant's arrest stemmed from a complaint from a citizen who had reported a suspicious person in her residential neighborhood. On May 26, 2007, around 6:00 a.m., the defendant had knocked on the citizen's door and asked to use her phone because his car had broken down. The citizen did not permit the defendant to enter her house but offered to make the phone call on the defendant's behalf. However, the citizen did not reach anyone because the number the defendant recited to her was disconnected. The defendant asked the citizen to call a second number but the citizen refused and told the defendant she was going to call the police. At this time, the defendant immediately walked away.

Officer Storey testified that he saw the defendant in the neighborhood and motioned for him to come over. The defendant walked toward Officer Storey and told him that his car broke down. Upon Officer Storey's request, the defendant pulled his identification card out of his waistband and handed it over. Officer Storey then asked if the defendant was in possession of anything Officer Storey "needed to know about." In response, the defendant said he had a gun in his possession. Officer Storey took the defendant into custody and retrieved a loaded .45 caliber semi-automatic pistol from the defendant's waistband. The pistol was reported as stolen from Dekalb County, Georgia. According to Officer Storey, the defendant's car was found parked on a nearby street. No one was in the defendant's car when it was found and searched. Two boxes of ammunition were found in the defendant's car. The defendant was charged with the unlawful possession of a weapon.

The defendant testified that he successfully completed the program at the Jack Gean facility and performed some community service while enrolled in the program. Following his release, however, the defendant did not participate in any other treatment for his addiction. The defendant admitted that he had used cocaine when he tested positive after the drug screen test. He acknowledged that he started using cocaine after he was released from the Jack Gean facility. However, the defendant denied that he had a gun on him when he was arrested by Officer Storey. The defendant said that he learned after his arrest that a gun was found in the glove compartment of his car. He did not know who the gun belonged to or why a gun was found in his car. The defendant also asserted that he did not know at the time of his arrest that he was not permitted to possess a gun.

Based upon the testimony at the hearing, the circuit court revoked the defendant's probation and ordered him to serve the remainder of his sentence in confinement. In so doing, the court stated the following:

[T]he Court finds that [the defendant] has, in fact, violated the terms and conditions of his probation in a substantial way; those being that he has failed to remain drug free while on probation. The Court finds that he did test positive for using cocaine . . . occurring just about six weeks after he had been in a long term treatment facility at the Jack Gean Drug and Alcohol Treatment Program. . . .

Also the Court finds that he violated probation by being arrested . . . for unlawful carrying or possession of a firearm and also possession of stolen property. The Court does credit the testimony of Officer Steven Storey when he says that he found a loaded .45 caliber Highpoint handgun on the defendant, on his person.

The decision to revoke probation lies in the sound discretion of the trial court. *State v. Leach*, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). The trial court may revoke probation upon finding by a preponderance of the evidence that the defendant has violated the conditions of his or her probation. *See* Tenn. Code Ann. §§ 40-35-310, 311(e); *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). The judgment of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. *Harkins*, 811 S.W.2d at 82. If the trial court has exercised “conscientious judgment in making the decision rather than acting arbitrarily,” then there is no abuse of discretion. *Leach*, 914 S.W.2d at 107. Discretion is abused only if the record contains no substantial evidence to support the trial court’s conclusion that a violation has occurred. *Harkins*, 811 S.W.2d at 82; *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

The defendant argues on appeal that the court should have given him another opportunity to successfully complete probation. However, the defendant cites no relevant authority or argument explaining how the court abused its discretion in revoking the defendant’s probation. In the instant case, the record clearly reflects that the defendant violated the conditions of his probation. The testimony at the revocation hearing established that the defendant tested positive for cocaine. Indeed, the defendant admitted that he was guilty of using cocaine while on probation. Furthermore, the testimony at the hearing established that the defendant was unlawfully carrying a stolen handgun. Accordingly, the court did not abuse its discretion in revoking the defendant’s probation. The defendant’s argument is without merit and the judgment of the circuit court is affirmed.

J.C. McLIN, JUDGE